

1 Stacie Foster, WSBA #23397  
2 Heather M. Morado WSBA #35135  
3 INVICTA LAW GROUP, PLLC  
4 1000 Second Avenue, Suite 3310  
5 Seattle, WA 98104-1019  
6 Telephone: (206) 903-6364  
7 Facsimile: (206) 903-6365

THE HONORABLE JAMES J. ROBERT

Attorneys for Plaintiff

8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

10 SOARING HELMET CORPORATION, a  
11 Washington corporation,

12 Plaintiff,

13 v.

14 NANAL, INC., a Nevada corporation, d/b/a  
15 LEATHERUP.COM

16 Defendant.

Cause No. C09-0789 JLR

AMENDED JOINT STATUS  
REPORT AND DISCOVERY  
PLAN

17 This Amended Joint Status Report and Discovery Plan is filed by Plaintiff  
18 SOARING HELMET CORPORATION ("Soaring Helmet") and Defendant NANAL,  
19 INC. ("Nanal").

20 **1. Statement of the Nature and Complexity of the Case**

21 The parties agree that this is not a complex case.  
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AMENDED JOINT STATUS REPORT AND DISCOVERY  
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1000 SECOND AVENUE, SUITE 3310  
SEATTLE, WA 98104-1019  
FAX (206) 903-6365  
TEL (206) 903-6364

1                   Plaintiff Soaring Helmet's Statement of the Case:

2                   Soaring Helmet has asserted claims for federal trademark infringement, false  
3 designation of origin, false advertising and unfair competition and tortious interference  
4 with prospective economic advantage against Nanal. The claims are in connection with  
5 the alleged infringement of Soaring Helmet's trademark "VEGA®".

6                   Soaring Helmet has used the trademark VEGA in connection with the marketing  
7 and sale of motorcycle helmets since 1994. Soaring Helmet has invested substantial  
8 sums of time, money, and effort to develop the favorable cachet, goodwill, and  
9 reputation associated with its VEGA mark. In April 2009, Soaring Helmet learned that  
10 when the query "VEGA helmets" was searched via the Google search engine, a false and  
11 misleading sponsored link appeared stating that Nanal's website, Leatherup.com, offered  
12 "50% off VEGA helmets." Soaring Helmet lost business as a result of the misleading  
13 advertisement when a potential distributor, attempting to research Soaring Helmet's  
14 reputation via the Google search engine, refused to associate with Soaring Helmet based  
15 on the mistaken assumption that it sells its VEGA helmets to deep discount retailers,  
16 when in fact, Soaring Helmet does not.

17  
18                   Soaring Helmet notified Defendant of its objection to the use of the VEGA mark  
19 as a keyword for Sponsored Links in connection with companies that do not in fact sell  
20 any of Soaring Helmet's products. Although Nanal has stopped using the VEGA as an  
21 advertising keyword on the Google search engine, a search query for "VEGA helmets"  
22 still generates an advertisement for the Leatherup.com website on other search engines,  
23 including but not limited to the Bing and Yahoo search engines. Soaring Helmet

1 believes that Nanal should not be permitted to siphon the goodwill associated with the  
2 VEGA mark by falsely luring consumers searching specifically for Soaring Helmet's  
3 mark to the Leatherup.com website. Although the confusion may be resolved once the  
4 consumer visits the Leatherup.com website, the damage to Soaring Helmet has already  
5 occurred because the potential consumer has been unfairly misled to the Leatherup.com  
6 website. Consumers should not be induced to purchase Leatherup.com's products based  
7 on an association with a trademark that Soaring Helmet exclusively owns. The use of  
8 Soaring Helmet's VEGA mark by Defendant unfairly trades on the favorable goodwill  
9 and cachet of the VEGA mark and creates initial interest confusion among consumers.

10 Defendant Nanal's Statement of the Case

11 Defendant Nanal, Inc. ("Nanal") is a Nevada corporation that does business as  
12 Leatherup.com, selling products for motorcyclists via its website and by telephone. As  
13 part of its online advertising, Nanal participated in Google's "AdWords" program,  
14 which—as Google has described it—allows businesses to promote their products and  
15 services through targeted advertising. As part of the AdWords program, Google sells  
16 advertising to appear as "Sponsored Links" that appear next to user's search results for  
17 particular terms and phrases. In this litigation, Plaintiff Soaring Helmet Corporation  
18 ("Plaintiff") asserts four claims regarding Nanal's participation in Google's AdWords  
19 program—specifically as it relates to Plaintiff's claimed trademark "VEGA"—for  
20 trademark infringement and false designation of origin, false advertising and unfair  
21 competition under the Lanham Act, unfair competition under Washington's Consumer  
22 Protection Act and tortious interference with prospective economic advantage.  
23

1 Among other defenses asserted in this litigation, Nanal contends that Plaintiff  
2 cannot establish any likelihood of confusion as to source, sponsorship or affiliation in  
3 connection with Nanal's participation in Google's AdWords program. In addition, to the  
4 extent Plaintiff claims any purported injury in connection with Nanal's alleged actions,  
5 any such alleged injury was fleeting at best and the issue has since been resolved. Before  
6 filing this lawsuit, Plaintiff sent a cease and desist letter to Leatherup.com in April 2009  
7 demanding that it "immediately remove any reference to the [VEGA] Mark from any  
8 false and misleading sponsored listing advertisements[.]" Nanal promptly took steps to  
9 attempt to address Plaintiff's concern. It modified the Leatherup.com online advertising  
10 so that it did not appear as sponsored links with "VEGA," "Vega Helmets," or "Vega"  
11 with any other word(s). In August 2009, Nanal further modified its Google AdWords  
12 campaign to incorporate the instruction "not Vega" so that the advertisements do not  
13 appear when "Vega" is searched alone or together with any other word.  
14

15 Defendant contends that Plaintiff's assertions with respect to "other search  
16 engines, including Bing and Yahoo" as set forth in its statement of the case herein are  
17 outside the scope of Plaintiff's First Amended Complaint and outside the scope of  
18 Plaintiff's "cease and desist" letters dated April 28, 2009 (Exhibits C and D to First  
19 Amended Complaint), and therefore are not proper subjects of this action, not before the  
20 Court, and not subjects as to which Plaintiff has given Defendant reasonable notice.

21 As a consequence of these and other factual and legal issues, Nanal contends that  
22 Plaintiff cannot establish the claims identified in Plaintiff's First Amended Complaint.  
23

1       **2. Preferred ADR Method**

2           The parties' preferred ADR method is mediation, pursuant to Local Rule 39.1.

3       **3. Timing of ADR Proceeding**

4           The parties believe that ADR, and specifically, mediation, should be conducted  
5 by November 12, 2010.

6       **4. Deadline for Joining Additional Parties**

7           The parties propose additional parties be joined by January 31, 2010.

8       **5. Proposed Discovery Plan**

9           The parties suggest the following discovery plan:

10       **A. FRCP 26(f) Conference and FRCP 26(a) Initial Disclosures**

11           The parties held a telephonic FRCP 26(f) Conference on January 5, 2010. Initial  
12 Disclosures will be exchanged by January 25, 2010.

13       **B. Subject Matter and Phases of Discovery**

14           The parties require discovery related to all issues in this case.

15       **C. Limitations on Discovery**

16           The parties do not believe at present that any other changes should be made to the  
17 limitations on discovery imposed under the Federal and Local Civil Rules, or that any  
18 other limitations should be imposed. Recognizing, however, that circumstances may  
19 change as the case progresses, the parties reserve the right to request changes if  
20 circumstances warrant.  
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1                   **D.     Discovery Management**

2                   The parties will work together to minimize discovery disputes. In addition, the  
3 parties will prepare and file an agreed electronic discovery protocol.

4                   **E.     Other Discovery Orders**

5                   The parties believe that a protective order is required to protect confidential  
6 information exchanged during discovery. The parties will prepare and file an agreed  
7 Stipulated Protective Order. The parties are not presently aware of any other orders that  
8 should be entered by the Court under FRCP 26(c) or under Local Rule CR 16(b) and (c).

9  
10                  **6.     Date for Completion of Discovery**

11                  The parties agree that discovery can be completed by September 30, 2010.

12                  **7.     Referral to Magistrate Judge**

13                  The parties do not agree to the designation of a magistrate judge.

14                  **8.     Bifurcation**

15                  The parties see no need to bifurcate any issues.

16                  **9.     Pre-Trial Statements and Pre-Trial Order**

17                  The parties believe that the Local Rules need not be modified.

18                  **10.    Suggestions for Shortening or Simplifying the Case**

19                  The parties presently have no suggestions to offer at this time for shortening or  
20 simplifying the case.

21                  **11.    Date Ready for Trial**

22                  The parties agree that the matter can be ready for trial by January 31, 2011.  
23

1       **12. Trial by Jury**

2           A jury trial at this time has not been requested.

3       **13. Number of Trial Days Required**

4           The parties anticipate that trial of this matter will require 2-3 court days.

5       **14. Names, Addresses and Telephone Numbers of Trial Counsel**

6       Plaintiff:           Stacie Foster  
7                           Steven W. Edmiston  
8                           Heather M. Morado  
9                           INVICTA LAW GROUP, PLLC  
10                          1000 Second Avenue, Suite 3310  
11                          Seattle, Washington 98104  
12                          Telephone: (206) 903-6364  
13                          Facsimile: (206) 903-6365  
14                          sfoster@invictalaw.com  
15                          sedmiston@invictalaw.com  
16                          hmorado@invictalaw.com

17       Defendant:       Katherine Hendricks  
18                           HENDRICKS & LEWIS, PLLC  
19                           901 Fifth Avenue, Suite 4100  
20                           Seattle, Washington 98164  
21                           Telephone: (206) 624-1933  
22                           Facsimile: (206) 583-2716  
23                           kh@hllaw.com

16       **15. Service of all Parties**

17           Defendant has been served.

18       **16. Scheduling Conference**

19           The parties do not believe that a scheduling conference is required.  
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21  
22  
23

1 RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of January 2010.

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3 INVICTA LAW GROUP, PLLC

HENDRICKS & LEWIS, PLLC

4 BY: Heather Morado  
5 Heather M. Morado, WSBA No. 35135  
6 Stacie Foster, WSBA No. 23397  
7 Steven W. Edmiston, WSBA No. 17136  
8 Heather M. Morado, WSBA No. 35135  
9 Attorneys for Plaintiff Soaring Helmet  
10 Corp.

BY: /s/ KATHERINE HENDRICKS  
Katherine Hendricks, WSBA No. 14040  
Attorney for: Nanal, Inc.

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AMENDED JOINT STATUS REPORT AND DISCOVERY  
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TEL (206) 903-6364



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I electronically filed the foregoing with the Clerk of the Court  
3 using the CM/ECF system which will send notification of such filing to the following  
4 persons/attorneys of record:  
5

6 Ms. Katherine Hendricks  
7 Hendricks & Lewis, PLLC  
8 kh@hllaw.com

9 Dated this 19<sup>th</sup> day of January, 2010, at Seattle, Washington.

10 

11 Katy M. Albritton  
12 Legal Assistant  
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